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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

LUIS CUEVAS, individually and on
behalf of all others similarly situated,

Plaintiffs,

vs.

GARDNER TRUCKING, INC., and
DOES 1-10, inclusive,

Defendants,

Case No.

CLASS ACTION

COMPLAINT FOR:

- 1. VIOLATION OF FAIR CREDIT REPORTING ACT (15 U.S.C. § 1681, *et seq.*);**
- 2. FAILURE TO PAY MINIMUM WAGES AND LIQUIDATED DAMAGES (Labor Code §§ 1194, 1197 And Wage Order);**
- 3. FAILURE TO PAY ALL REGULAR WAGES (Labor Code § 204);**
- 4. FAILURE TO PAY OVERTIME (Labor Code §§ 510, 1194, 1198 And Wage Order)**
- 5. FAILURE TO PROVIDE REST BREAKS (Labor Code §§ 226.7 And Wage Order)**
- 6. FAILURE TO PROVIDE MEAL PERIODS (Labor Code §§ 226.7, 512, And Wage Order)**
- 7. FAILURE TO PROVIDE ACCURATE WAGE STATEMENTS (Labor Code §§ 226);**
- 8. FAILURE TO PAY ALL WAGES OWED UPON**

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**TERMINATION (Labor Code
§§ 201-203);
9. VIOLATION OF
CALIFORNIA *BUSINESS
AND PROFESSIONS CODE*
§17200.**

1 Plaintiff Luis Cuevas (hereinafter “Plaintiff”), hereby submits this Class
2 Action Complaint against Defendant Gardner Trucking, Inc., and other as yet
3 unknown entities (hereinafter collectively referred to as “Defendants” or
4 “Gardner”) on behalf of himself and a class of all other similarly situated potential,
5 current and former employees of Gardner for penalties and damages for violations
6 of the Fair Credit Reporting Act, 15 U.S.C. 1681 *et seq.*, (“FCRA”) for
7 Defendants’ willful, intentional and purposeful disregard of the FCRA’s disclosure
8 and liability waiver requirements. In addition, Plaintiff brings this case on behalf
9 of current and former employees of Gardner for penalties and damages for
10 Defendant’s failure to pay all wages earned, failure to pay all wages upon
11 termination, keep accurate records, failure to comply with statutorily compliant
12 meal and rest breaks, failure to comply with the proper notice requirements under
13 the California Labor Code, and for restitution and injunctive relief as follows:

14 **INTRODUCTION**

15 1. Plaintiff brings this wage and hour Class Action against Defendants,
16 and each of them, pursuant to Federal Rules of Civil Procedure, Rule 23. Plaintiff
17 brings this action on behalf of himself and for the benefit of all other persons who
18 applied for employment or who were actually employed directly by Defendants,
19 and each of them. All allegations in this wage and hour Class Action Complaint
20 are based upon information and belief, except for those allegations which pertain to
21 the Plaintiff named herein and her counsel. Plaintiff’s information and beliefs are
22 based upon, inter alia, the investigation conducted to date by Plaintiff and her
23 counsel. Each allegation in this wage and hour Class Action Complaint either has
24 evidentiary support or is likely to have evidentiary support after a reasonable
25 opportunity for further investigation and discovery.

26 2. On information and belief, for at least four years prior to the filing of
27 this action and through to the present, Defendants employed Plaintiff and the
28 putative class members in San Bernardino County, and other counties in the State

1 of California, and maintained and enforced against Plaintiff and the putative class
2 members the systemic policies, practices, and/or customs complained of herein.
3 Plaintiff seeks relief on behalf of himself, and the members of the Plaintiff Class,
4 as a result of systemic employment policies, practices and procedures, more
5 specifically described below, which violate the FCRA, the California Labor Code,
6 and the orders and standards promulgated by the California Department of
7 Industrial Relations, Industrial Welfare Commission, and Division of Labor
8 Standards Enforcement, and which have resulted in the failure of Defendants to
9 provide Plaintiff and members of the Class and Subclasses accurate wage
10 statements. Said employment policies, practices and procedures are generally
11 described as follows:

- 12 a. Defendants failed to properly notify Plaintiff and class members of the
13 usage of their personal identity information, such as their social
14 security numbers, to pull credit reports, prior to completing the hiring
15 process.
- 16 b. Defendants failed to properly pay Plaintiff and class members for all
17 time worked, including at least the state-mandated minimum wages
18 for all hours worked, including, but not limited to, time spent working
19 off the clock during meal breaks, before and after shifts, time spent
20 working on the clock but deducted, through both manual adjustments
21 and automated timekeeping parameters, and other uncompensated
22 time for which Plaintiffs and class members were clocked in and
23 subject to their employers' direction and control;
- 24 c. Defendants failed to pay all wages due and owing to their non-exempt
25 employees, including Plaintiff and the class members, in violation of
26 California Labor Code ("*Labor Code*") and Industrial Welfare
27 Commission 4 and/or 9 ("*Wage Order*");
- 28 d. Defendants required, suffered, employed, and/or permitted Plaintiff

- 1 and class members to work in excess of regular work hours without
2 the required overtime and/or double time compensation;
- 3 e. Defendants failed to provide Plaintiff and class members with rest
4 periods and/or failed to properly compensate Plaintiff and members of
5 the proposed class for such malfeasance in providing proper rest
6 periods, as required by *Labor Code* § 226.7 and Wage Order 9;
- 7 f. Defendants failed to provide Plaintiff and class members with duty-
8 free meal periods of at least thirty minutes and/or failed to properly
9 compensate Plaintiff and members of the proposed class for such
10 malfeasance in providing proper meal periods, as required by *Labor*
11 *Code* §§ 226.7 and 512 and Wage Order 9;
- 12 g. Defendants failed to issue accurate itemized wage statements to their
13 non-exempt employees, including Plaintiff and the class members, in
14 violation of, *inter alia*, *Labor Code* §226 and Wage Order 9;
- 15 h. Defendant failed provide written notice of the amount of paid sick
16 leave available, or paid time off leave provided in lieu of sick leave,
17 on either the employee's itemized wage statement or a separate
18 writing provided on the employee's designated pay date, as required
19 under Labor Code §246(h), to the non-exempt employees, including
20 Plaintiff and the class members.
- 21 i. Defendants failed to pay Plaintiff and members of the Terminated
22 Subclass all wages due upon termination of their employment, in
23 violation of *Labor Code* §§ 201-203; and,
- 24 j. Violating *Business and Professions Code* §§ 17200 et seq. as further
25 set forth below.
- 26 3. Plaintiff also alleges that Defendants, and each of them, had the clear
27 ability to provide disclosures and liability waivers, pay such wages as are/were due
28 and owing to the Plaintiff and members of the Plaintiff Class, but intentionally did

1 not pay such wages, in conscious disregard of the rights of Plaintiff and the
2 members of the Plaintiff Class to timely payment of their wages.

3 4. This action seeks relief for the un-remediated violations of California
4 law including, *inter alia*:

- 5 a. Damages and/or penalties for Plaintiff and Class Members who were
6 not properly notified of Defendants pulling of credit reports, prior to
7 completing the hiring process, in conformity with California law;
- 8 b. Damages and/or restitution, as appropriate, to Plaintiff and to the
9 Class Members, for non-payment of the wages due them and interest
10 thereon;
- 11 c. Damages and/or restitution, as appropriate, to Plaintiff and to the
12 Class Members, for non-payment of meal and rest period wages,
13 including premium wages;
- 14 d. Damages and/or restitution, as appropriate, to Plaintiff and to the
15 Class Members, for failing to provide written notice of the amount of
16 paid sick leave available, or paid time off leave provided in lieu of
17 sick leave, on either the employee's itemized wage statement or a
18 separate writing provided on the employee's designated pay date;
- 19 e. Damages and/or penalties for Plaintiff and Class Members who were
20 not issued accurate itemized wage statements in conformity with
21 California law;
- 22 f. Damages and/or penalties for Plaintiff and Class Members who
23 voluntarily quit, or were laid off and/or terminated, but who were not
24 paid all wages due and owing in conformity with California law;
- 25 g. Implementation of other equitable and injunctive relief, including,
26 *inter alia*, an injunction prohibiting Defendants, and each of them,
27 from continuing to:
 - 28 i. fail to pay all wages due in accordance with the *Labor Code*

1 and Wage Order 4 and/or 9;

2 ii. fail to authorize and permit mandated meal and rest periods or
3 pay additional wages to their employees who did not receive
4 the required meal and rest periods in accordance with the *Labor*
5 *Code* and Wage Order 4 and/or 9;

6 iii. fail to issue accurate itemized wage statements in accordance
7 with the *Labor Code* and Wage Order 4 and/or 9; and,

8 iv. fail to pay all compensation due to their non-exempt production
9 employees at the time of the termination of their employment in
10 accordance with the *Labor Code*; and,

11 g. Attorney fees and costs as provided by statute and/or applicable case
12 law including, without limitation, *Labor Code* §§ 226 and 1194, and
13 *Code of Civil Procedure* § 1021.5; and such other relief as the Court
14 deems just and proper.

15 5. The claims herein are brought by Plaintiff on his own behalf and on
16 behalf of the Class which is defined as individuals who are currently or have been
17 employed in California by defendants as non-exempt employees during the Class
18 Period (which commences four years prior to the filing of this action and continues
19 until judgment is rendered herein), and whose working conditions are not
20 controlled by a collective bargaining agreement.

21 6. “Class Period” shall mean the period from four years prior to the date
22 this Complaint was filed, through and including the date judgment is rendered in
23 this matter. Plaintiff herein reserves the right to amend this Complaint to reflect a
24 different Class Period as discovery in this matter proceeds.

25 **JURISDICTION AND VENUE**

26 7. This Court has jurisdiction over this matter pursuant to the provisions
27 of the California *Labor Code* and regulations, as well as *Business & Professions*
28 *Code* § 17200 and under the FCRA, 15 U.S.C. § 1681, *et seq.*

1 8. Venue is proper in San Bernadino County because the conduct alleged
2 herein which gives rise to the claims asserted occurred within Riverside County.
3 Specifically, Plaintiff Luis Cuevas worked for Defendant Gardner Trucking, Inc.
4 within San Bernardino County, and the wages herein claimed were earned by her
5 in San Bernardino County.

6 9. This Court has jurisdiction over Plaintiff and Class members' claims
7 under 28 U.S.C. §1331 and §1367 because a substantial portion of the claims arise
8 under federal law, specifically 15 U.S.C. 1681 *et seq.*, and all others claims arise
9 under the same transaction and occurrence as the federal claims.

10 10. This Court also has original federal subject matter jurisdiction over
11 this matter pursuant to the Class Action Fairness Act of 2005, Pub. L. 109-2, 119
12 Stat. 4 (Feb. 18, 2005), by virtue of 28 U.S.C. §1332(d)(2), which explicitly
13 provides for the original jurisdiction of federal courts in any class action in which
14 at least 100 members are in the proposed plaintiff class, any member of the
15 plaintiff class is a citizen of a State different from the State of citizenship of any
16 defendant, and the matter in controversy exceeds the sum of \$5,000,000.00,
17 exclusive of interests and costs.

18 11. In the case at bar, there are at least 100 members in the proposed
19 Class and Sub-classes, the total claims of the proposed Class members are in
20 excess of \$5,000,000.00 in the aggregate, exclusive of interests and costs, and
21 Plaintiffs and the class are citizens throughout various States across the United
22 States.

23 12. Venue as to all Defendants is proper in this County pursuant to Code
24 of Civil Procedure section 395(a). Plaintiff is informed and believes, and thereon
25 alleges that Gardner conducts business, employs Class members, and has locations
26 in San Bernardino County and within this jurisdictional district, and the events
27 complained of occurred in this County.

28 ///

THE PARTIES

13. Plaintiff Luis Cuevas has been employed by Defendants as a Non-Exempt Employee during the Class Period, specifically from on or around August 4, 2016 to May 26, 2017. Plaintiff is a resident of the County of Riverside, California. Plaintiff is a member of the Class and is a “consumer” as defined by 15 U.S.C. §1681a.

14. Plaintiff is informed and believes and thereon alleges that at all times relevant to this litigation, Defendant Gardner Trucking, Inc. was and/or is a corporation, organized and existing pursuant to the laws of the state of California, which conducted and/or conducts its business in the State of California. Defendants were at all relevant times doing business throughout the State of California, have various offices and locations in the State, and serve numerous customers throughout the State. Gardner directly employed Plaintiff and members of the proposed class to perform work across California. Gardner also regularly provided information to consumer reporting agencies and is therefore an “information furnisher” as defined by the FCRA. At all relevant times, Defendant was a “person” as that term is defined by 15 U.S.C. §1681a(b) and Gardner is a “person” as defined in Labor Code section 18. Gardner is also an “employer” as that term is used in the Labor Code and the IWC wage orders.

15. Plaintiff was employed as a non-exempt driver recruiter assistant employee by Gardner, and worked at Gardner’s main office, located in Chino, California.

16. The members of the proposed class are likewise current and former employees of Gardner, employed in a similar fashion by Defendants within the state of California as non-exempt employees. Although the exact job titles may differ, all class members generally perform the same job duties, which include those typically associated with non-exempt activities.

1 Defendants and their subsidiaries, parents, or affiliated companies consistently
2 maintained and enforced against their non-exempt employees systemic policies
3 and practices that resulted in Defendants not paying Plaintiff and other non-exempt
4 production employees all wages due, including without limitation, all minimum,
5 regular, overtime, reporting time, hourly and/or piece-rate wages, all meal and rest
6 period wages, and failed to provide notice of sick leave, pursuant to California law.

7 23. On information and belief, and at all times relevant to this litigation,
8 Defendants and their subsidiaries, parents, or affiliated companies consistently
9 maintained and enforced against their non-exempt employees systemic policies and
10 practices that required Plaintiff and the other non-exempt employees to report to
11 work, but failed to compensate them for all time during which they were under the
12 employers' control and/or permitted or suffered to work, whether or not required to
13 do so.

14 24. Gardner's policy and practice is to deny earned wages, including
15 overtime pay, to its non-exempt hourly employees at its transportation facilities
16 throughout California. In particular, Gardner requires its employees to be present
17 and perform work in excess of eight hours per day and/or forty hours per work
18 week but fails to pay them overtime accordingly, and further fails to pay for all
19 straight time hours worked, including during meal and rest breaks.

20 25. The requirement to work overtime by non-exempt employees was
21 frequent and unavoidable and employees were required to work overtime hours in
22 order to complete their job duties, including after their shift.

23 26. Gardner implements its unlawful policy and practice of failing to pay
24 for all overtime hours worked by non-exempt employees under the following
25 means: (a) Gardner does not allow them to record all hours worked, including
26 hours in excess of forty per work week; (b) Gardner erases or modifies their
27 recorded hours, or requires them to erase or modify their recorded hours, to
28 eliminate or reduce hours worked, including hours in excess of forty per work

1 week; and/or (c) Gardner requires them to work during uncompensated breaks.

2 27. Plaintiff is in possession of company timekeeping records which show
3 that individuals in the payroll department, including “BN” “SE” “LE” “MP” and
4 “CD” were making unauthorized time edits to Plaintiff’s time punches.
5 Specifically, such individual were detrimentally altering Plaintiff’s time records for
6 purposes of processing payroll, as well as adding in fake meal and rest breaks that
7 Plaintiff never took and was never provided. On information and believe, Plaintiff
8 alleges that this practice of wage theft and illegal time manipulation was systemic
9 and widespread and was employed against other Class Members. This practice
10 deprived Plaintiff of 10 minutes of compensable time for ever fake rest break, 30
11 minutes of compensable time for every fake meal break, an hour pay for each
12 break violation, as well as other time which was shaved from his records, including
13 overtime.

14 28. Gardner could easily and accurately record the actual time worked by
15 all non-exempt employees, and indeed, utilizes an electronic time clock at its
16 transportation facilities. However, this electronic time clock is subject to
17 manipulation, both by way of automated “rounding” parameters, which are used to
18 automatically deduct time from non-exempt employees’ time records, as well as
19 manual adjustments made by managers.

20 29. The net effect of Gardner’s policy and practice, instituted and
21 approved by company managers, is that Gardner willfully fails to pay overtime
22 compensation and willfully fails to keep accurate time records, in order to save
23 payroll costs. Gardner enjoys millions of dollars in ill-gained profits at the expense
24 of its hourly employees.

25 30. On information and belief, and at all times relevant to this litigation,
26 Defendants and their subsidiaries, parents, or affiliated companies consistently
27 maintained and enforced against their non-exempt employees policies and
28 practices that resulted in Defendants not providing Plaintiff and other non-exempt

employees proper required meal and rest periods in accordance with California law. By way of example, even though Defendants consistently deducted a 30 minute meal period from each employee's "time worked," this time was deducted, both by manual adjustments made by management, as well as through automated means, such that these adjusted time records reflected a compliant meal period was provided even in instances where it was not. Indeed, Plaintiff and other non-exempt employees would routinely be denied a timely duty-free 30 minute meal break, yet their time records were adjusted to reflect that they had. Plaintiff alleges that such instances do not satisfy the *Labor Code's* requirement that an employer provide a duty-free, thirty minute uninterrupted meal period no later than the end of the fifth hour of work. Plaintiff and the other non-exempt employees did not voluntarily waive the meal or rest periods. Further, Defendants did not compensate Plaintiff and the other non-exempt employees an additional hour's wage for each of Defendants' failure to provide the mandated meal or rest periods.

31. On information and belief, and at all times relevant to this litigation, Defendants and their subsidiaries, parents, or affiliated companies consistently maintained and enforced against their non-exempt employees policies and practices whereby Defendants willfully failed to issue accurate itemized wage statements to Plaintiff and the other non-exempt production employees in violation of *Labor Code* §226.

32. On information and belief, and at all times relevant to this litigation, Defendants and their subsidiaries, parents, or affiliated companies consistently maintained and enforced against their non-exempt employees policies and practices whereby Defendants willfully failed to provide non-exempt employees with written notice of the amount of paid sick leave available, or paid time off leave provided in lieu of sick leave, on either the employee's itemized wage statement or a separate writing provided on the employee's designated pay date, per the requirements set forth under *Labor Code* § 246(h).

1 33. On information and belief, and at all times relevant to this litigation,
2 Defendants and their subsidiaries, parents, or affiliated companies consistently
3 maintained and enforced against their non-exempt transportation employees
4 systemic policies and practices whereby Defendants willfully failed to pay the
5 wages Defendants owed Plaintiff and the other non-exempt employees at the time
6 of layoff or at the time of their employment separation in violation of *Labor Code*
7 §§201, 202 and 203.

8 34. On information and belief, and at all times relevant to this litigation,
9 Defendants have made it difficult to account with precision for the unlawfully
10 withheld wages due non-exempt employees, including Plaintiff and other non-
11 exempt employees, because they did not maintain accurate payroll records and/or
12 issue accurate itemized wage statements as required for non-exempt employees
13 by *Labor Code* §§ 226, 1174(d), and the applicable Wage Order. For example,
14 Defendants failed to comply with *Labor Code* § 226(a) inasmuch as they did not
15 issue Plaintiff and other non-exempt employees itemized wage statements that
16 accurately list the hours worked, net and gross wages earned, applicable rates of
17 pay, and the address of the legal entity that is the employer, as required. Plaintiff
18 and the other non-exempt employees have been injured by Defendants' knowing
19 and intentional failure to provide them accurate itemized wage statements.
20 Pursuant to *Labor Code* § 226(e), Plaintiff and Class Members are entitled to
21 recover the greater of all actual damages, or penalties not to exceed \$4,000.00 for
22 each employee.

23 35. Plaintiff and members of the Terminated Subclass, whose
24 employment with defendants was terminated during the Class Period, were
25 routinely not paid, upon termination, all wages due to them, in violation of
26 California *Labor Code* § 201-203. Specifically, members of the Terminated
27 Subclass were not paid: (1) for all time worked; and (2) the premium wages due
28 for Defendants' failure to provide proper meal and rest breaks. During the Class

1 Period, and continuing to the present, Defendants have had a consistent policy,
2 practice, custom, and/or habit of failing to provide members of the Terminated
3 Subclass all wages due to them upon termination.

4 36. The wage and hour violations herein alleged were and are willful and
5 deliberate, and were taken pursuant to, and resulted from Defendants' systemic
6 policies, customs, and practices, which Defendants applied uniformly to Plaintiff
7 and all members of the Plaintiff Class, and which have resulted in the unjust
8 enrichment of Defendants at the expense of Plaintiff and members of the Plaintiff
9 Class.

10 37. As a direct result of the wage and hour violations herein alleged,
11 Plaintiff and members of the Plaintiff Class have suffered, and continue to suffer
12 substantial losses related to the use and enjoyment of wages, lost interest on such
13 wages, and expenses and attorney's fees in seeking to compel Defendants to fully
14 perform their obligations under state law, all to their respective damage in amounts
15 according to proof at the time of trial.

16 **CLASS ACTION ALLEGATIONS**

17 38. Plaintiff incorporates all preceding paragraphs as though fully set
18 forth herein.

19 39. Plaintiff brings this action as a class action pursuant to The Federal
20 Rules of Civil Procedure 23, on behalf of the following defined Class and
21 Subclasses. The class which Plaintiff seeks to represent is composed of and
22 defined as follows:

23 **Class:**

24 All individuals in the United States who have applied to
25 work with Defendant during the Class Period, and whose
26 working conditions were subject to an unauthorized
27 background check.

28 **California Subclass 1:**

1 All persons who are employed or have been employed by
2 Defendants during the Class Period in California, who
3 were, at any time within four years of the filing of this
4 Complaint, classified as a non-exempt employee of
5 Defendants.

6 California Subclass 2:

7 All members of the Plaintiff Class whose employment
8 ended during the Class Period.

9 40. Excluded from the Plaintiff Class and Terminated Subclass are any of
10 Defendants' leads, supervisors, managers, shift leaders, crew leaders, or any other
11 employees in a managerial or supervisory position that were involved in enforcing
12 or effectuating the unlawful conduct alleged herein.

13 41. The Class Period is the period from four years prior to the date this
14 Complaint was filed, through and including the date judgment is rendered in this
15 matter.

16 42. Numerosity: Plaintiff is informed and believes, and on that basis
17 alleges, that during the Class Period, there have been over one hundred Class
18 members. As a result, the members of the Class are so numerous that joinder of all
19 members is impossible and/or impracticable.

20 43. Commonality: Common questions of law and fact exist as to all
21 members of the class which predominate over any questions affecting only
22 individual members of the class. These common legal and factual questions,
23 which do not vary from class member to class member, and which may be
24 determined without reference to the individual circumstances of any class member,
25 include, but are not limited to, the following:

- 26 a. Whether Defendant violated the FCRA when Defendant pulled credit
27 reports for Plaintiff, and members of the proposed class;
28 b. Whether Plaintiff and members of the proposed class are subject to

- 1 and entitled to the benefits of California wage and hour statutes;
- 2 c. Whether Defendants violated the applicable Labor Code and Wage
- 3 Orders by not paying all minimum, regular, overtime, double-time,
- 4 meal period, and rest period wages owed to Plaintiff and to the
- 5 Plaintiff Class;
- 6 d. Whether Defendants had a standard policy and/or practice of failing to
- 7 pay for all time worked by non-exempt employees;
- 8 e. Whether Defendants had a standard policy and/or practice of denying
- 9 Plaintiff and members of the Plaintiff Class proper meal and rest
- 10 breaks;
- 11 f. Whether Defendants had a standard policy and/or practice of failing to
- 12 compensate Plaintiff and members of the Plaintiff Class for meal and
- 13 rest periods that did not comply with California law;
- 14 g. Whether Defendants maintained accurate records of the hours worked
- 15 by non-exempt employees;
- 16 h. Whether Defendants maintained a policy to provide written notice of
- 17 the amount of paid sick leave available, or paid time off leave
- 18 provided in lieu of sick leave, on either the employee's itemized wage
- 19 statement or a separate writing provided on the employee's designated
- 20 pay date, as required by *Labor Code* § 246(h);
- 21 i. Whether Defendants had a standard policy and/or practice of failing to
- 22 provide Plaintiff and members of the Plaintiff Class with accurate and
- 23 proper wage statements upon payment of wages, in violation of *Labor*
- 24 *Code* § 226;
- 25 j. Whether Defendants had a standard policy and/or practice of failing to
- 26 promptly pay compensation owing to Plaintiff and members of the
- 27 Terminated Subclass upon termination of their employment, in
- 28 violation of Labor Code §§ 201-203;

1 k. Whether Plaintiff and members of the Plaintiff Class sustained
2 damages, and if so, the proper measure of such damages, as well as
3 interest, penalties, costs, attorneys' fees, and equitable relief;

4 l. Whether Defendants' conduct as alleged herein violates the Unfair
5 Business Practices Act of California, *Bus. & Prof. Code* § 17200, et
6 seq.

7 44. Typicality: The claims of the named Plaintiff are typical of the claims
8 of the members of the proposed class. Plaintiff and other class members sustained
9 losses, injuries and damages arising from defendants' common policies, practices,
10 procedures, protocols, routines, and rules which were applied to other class
11 members as well as to Plaintiff. Plaintiff seeks recovery for the same type of
12 losses, injuries, and damages as were suffered by other members of the proposed
13 class.

14 45. Adequacy of Representation: Plaintiff is an adequate representative of
15 the proposed class because she is a member of the class and her interests do not
16 conflict with the interests of the members she seeks to represent. Plaintiff has
17 retained competent counsel, experienced in the prosecution of complex class
18 actions, and together Plaintiff and her counsel intend to prosecute this action
19 vigorously for the benefit of the class. The interests of the class members will
20 fairly and adequately be protected by Plaintiff and her attorneys.

21 46. Superiority of Class Action: A class action is superior to other
22 available methods for the fair and efficient adjudication of this litigation since
23 individual litigation of the claims of all class members is impracticable. It would
24 be unduly burdensome to the courts if these matters were to proceed on an
25 individual basis, because this would potentially result in hundreds of individual,
26 repetitive lawsuits. Individual litigation presents the potential for inconsistent or
27 contradictory judgments, and the prospect of a "race to the courthouse," and an
28 inequitable allocation of recovery among those with equally meritorious claims.

1 By contrast, the class action device presents far fewer management difficulties and
2 provides the benefit of a single adjudication, economics of scale, and
3 comprehensive supervision by a single court.

4 **CAUSES OF ACTION**

5 **FIRST CAUSE OF ACTION**

6 **VIOLATION OF THE FAIR CREDIT REPORTING ACT**
7 *Plaintiff Individually and on Behalf of the Class Against All Defendants*

8 47. Plaintiff incorporates all preceding paragraphs as though fully set
9 forth herein.

10 48. 15 U.S.C. §1681b(b)(2)(A), states in relevant part:

11
12 Except as provided in subparagraph (B), a person may not procure a
13 consumer report, or cause a consumer report to be procured, for employment
14 purposes with respect to any consumer, unless—

- 15 (i) A clear and conspicuous disclosure has been made in writing to the
16 consumer at any time before the report is procured or caused to be
17 procured, in a document that consists solely of the disclosure, that a
18 consumer report may be obtained for employment purposes; and
19 (ii) The consumer has authorized in writing (which authorization may be
20 made on the document referred to in clause (i)) the procurement of the
21 report by that person.

22
23 49. By engaging in the conduct described above, Defendants have
24 violated this provision of the Fair Credit Reporting Act.

25 50. To the extent that Defendants actions constitute a violation of the Fair
26 Credit Reporting Act, such actions were knowing, willfully, purposefully, and
27 intentionally.
28

SECOND CAUSE OF ACTION

MINIMUM WAGES AND LIQUIDATED DAMAGES

(Labor Code §§ 558, 1194, 1194.2, 1197 & 1198, and Wage Order 4 and/or 9)
Plaintiff Individually and on Behalf of the California Class 1 Against Defendants

51. Plaintiff incorporates all preceding paragraphs as though fully set forth herein.

52. At all times relevant to this complaint, Defendants, and each of them, failed, and have continued to fail, to pay Plaintiff and each class member all wages due, including the minimum wage, as required by law.

53. As a direct and proximate result of the acts and/or omissions of each Defendant, Plaintiff and each class member has reported to work as required and has not been compensated for all working time while under the control of the employer, and performed pre- and post-shift work the has not been compensated at the agreed wage nor even at least at the minimum wage for said work. Accordingly, Plaintiff and each class member has been deprived of wages due, including minimum wages, in amounts to be determined at trial.

54. The applicable minimum wages fixed by the commission for Plaintiff and the class members is found in Wage Order 4 and/or 9.

55. Pursuant to California Labor Code § § 1194 and 1194.2 as a result of Defendants' failure to pay Plaintiff and the class members all wages due, Plaintiff and the class members are entitled to each recover the unpaid wages and liquidated damages in an amount equal to the wages unlawfully unpaid, plus interest, fees and costs thereon.

THIRD CAUSE OF ACTION

FAILURE TO PAY ALL REGULAR WAGES

(Labor Code §204)
Plaintiff Individually and on Behalf of the California Class 1 Against Defendants

56. Plaintiff incorporates all preceding paragraphs as though fully set

1 forth herein.

2 57. At all times relevant herein, Defendants were required, by California
3 *Labor Code* § 204, to compensate Plaintiff correct and proper regular wages for all
4 regular hours worked.

5 58. As a pattern and practice, Defendant regularly required Plaintiff to
6 work more than eight (8) hours in a day, and forty (40) hours in a week; and
7 required Plaintiff to work through meal and rest breaks. Regardless of the number
8 of hours worked, Plaintiff received the same pay, without payment of wages for all
9 hours actually worked.

10 59. Plaintiff is informed and believes and based thereon alleges that
11 Defendants willfully failed to pay Plaintiff all regular wages for all hours worked.
12 Plaintiff is informed and believes and based thereon alleges that Defendants'
13 willful failure to provide all regular wages due and owing upon separation from
14 employment results in a continued payment of wages up to thirty (30) days from
15 the time the wages were due. Therefore, Plaintiff is entitled to compensation
16 pursuant to *Labor Code* § 203.

17 60. Such a pattern, practice and uniform administration of unlawful
18 corporate policy regarding employee compensation as described herein creates an
19 entitlement to recovery by Plaintiff for damages and wages owed, and for
20 penalties, interest, costs and attorney's fees.

21 **FOURTH CAUSE OF ACTION**

22 **OVERTIME AND DOUBLE TIME WAGES**

23 (Labor Code §§ 218.6, 558, & 1194, and Wage Order 4 and/or 9)

24 *Plaintiff Individually and on Behalf of the California Class 1 Against Defendants*

25 61. Plaintiff incorporates all preceding paragraphs as though fully set
26 forth herein.

27 62. At all times relevant, Defendants, and each of them, have failed to
28 properly calculate and pay Plaintiff and the class members the required overtime or

double time premium wages in accordance with the applicable statutes and Wage Order 4 and/or 9, in amounts to be proven at trial.

63. As a result of each Defendants' failures, Plaintiff and the class members are entitled to each recover the unpaid overtime and double time wages due, plus interest, attorney's fees, and costs.

FIFTH CAUSE OF ACTION

REST PERIODS

(Labor Code §§226.7, 558 & 1198, and Wage Order 4 and/or 9)

Plaintiff Individually and on Behalf of the California Class 1 Against Defendants

64. Plaintiff incorporates all preceding paragraphs as though fully set forth herein.

65. Wage Order 4 and/or 9, at section 12(A) provides, in pertinent part: "Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof [...] Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages."

66. *Labor Code* § 226.7, requires that Defendants provide Plaintiff and each class member all rest periods specified in the applicable Wage Orders and provides that Plaintiff and each class member is entitled to be paid one additional hour of pay per day at their regular rate of compensation as additional wages for the denied rest periods.

67. Plaintiff and each class member suffered a loss equal to his/her applicable hourly wage rate times the total number of times he/she was not authorized and permitted to take the legally-required rest periods and has therefore not been paid all of the wages due. Accordingly, Plaintiff and each class member are entitled to recover the unpaid wages in an amount to be proven at trial.

SIXTH CAUSE OF ACTION

MEAL PERIODS

(Labor Code §§ 226.7, 512, 558, & 1198, and Wage Order 4 and/or 9)
Plaintiff Individually and on Behalf of the California Class I Against Defendants

68. Plaintiff incorporates all preceding paragraphs as though fully set forth herein.

69. Defendants violated the applicable statutes, as well as Wage Order 4 and/or 9. Wage Order 4 and/or 9 provides, in pertinent part: “No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day’s work the meal period may be waived by mutual consent of the employer and the employee.” *Labor Code* § 512 contains parallel language.

70. Plaintiff alleges that they and members of the proposed class were not relieved of all duty for an entire 30 minutes. Rather, during their meal period, workers routinely received less than thirty minutes of duty-free time. Plaintiff alleges that Defendants nonetheless deducted a full thirty minutes on each occasion, and made manual and/or automated time entry adjustments to Class Member time sheets, to artificially reflect that meal breaks were compliant with the requirements of the Labor Code and Wage Order.

71. *Labor Code* § 226.7 requires that Defendants provide Plaintiff and each class member all meal periods specified in the applicable Wage Order and that Plaintiff and each class member was to be paid one additional hour of pay per day at his/her regular rate of compensation as additional wages for meal periods that were not properly provided.

72. Plaintiff and each class member have suffered a loss equal to his/her applicable hourly wage rate times the total number of times he/she was not authorized and permitted to take the legally-required meal periods and have

1 therefore not been paid all of the wages due. Accordingly, Plaintiff and each class
2 member are entitled to recover the unpaid wages in an amount to be proven at trial.

3 **SEVENTH CAUSE OF ACTION**

4 **ITEMIZED WAGE STATEMENT (CHECK STUBS) PENALTIES**
5 **(LABOR CODE §§226 and 558)**

6 *Plaintiff Individually and on Behalf of the California Class 1 Against Defendants*

7 73. Plaintiff incorporates all preceding paragraphs as though fully set
8 forth herein.

9 74. At all times relevant, each Defendant violated *Labor Code* § 226(a) by
10 falsely or failing to provide accurate, itemized wage statements, because the
11 statements failed to accurately report one or more of the following:

- 12 a. all employers' names and addresses;
13 b. total hours worked;
14 c. applicable rates of pay;
15 d. the number of piece rate units;
16 e. the applicable piece rate;
17 f. the rate of pay and total hours for each assignment; and,
18 g. gross and net wages earned.

19 75. Pursuant to *Labor Code* §§ 226(e) and (h), Plaintiff and each class
20 member are entitled to recover the greater of all actual damages or fifty dollars
21 (\$50) for the initial pay period in which a violation occurs and one hundred dollars
22 (\$100) per employee for each violation in a subsequent pay period, not exceeding
23 an aggregate penalty of four thousand dollars (\$4,000). Plaintiff and each class
24 member are further entitled to an award of costs and reasonable attorney's fees.

25 76. Defendants failed to accurately record the wages due to Plaintiff and
26 members of the proposed class, specifically including, but not limited to, by failing
27 to record wages due for so-called "non-productive" time, as well as premium
28 wages for Defendants' failure to provide proper rest and meal breaks.

1 77. Plaintiff and members of the Plaintiff Class were injured by
2 Defendants' failure to provide accurate wage statements because, among other
3 things, they were unable to determine the proper amount of wages actually owed to
4 them, and whether they had received full compensation therefor.

5 78. Plaintiff and members of the Plaintiff Class request recovery of *Labor*
6 *Code* § 226(e) penalties according to proof, as well as interest, attorney's fees and
7 costs pursuant to *Labor Code* § 226(e), and all other damages, attorneys' fees,
8 costs, expenses and interest permitted by statute.

9 **EIGHTH CAUSE OF ACTION**

10 **WAITING TIME PENALTIES**

11 **(CALIFORNIA LABOR CODE §§ 201-203 and 558)**

12 *Plaintiff Individually and on Behalf of the California Class 2 Against Defendants*

13 79. Plaintiff incorporates all preceding paragraphs as though fully set
14 forth herein.

15 80. *Labor Code* §§ 201 and 202 require that Defendants pay their
16 employees all wages due within 24 hours after a discharge or 72 hours after a
17 resignation from employment, if the employee has given less than 72 hours notice.
18 *Labor Code* § 203 provides that if an employer willfully fails to timely pay such
19 wages the employer must, as a penalty, continue to pay the employee's daily wage
20 until the back wages are paid in full or an action is commenced. The penalty
21 cannot exceed 30 days of wages.

22 81. Plaintiff and the class members are entitled to compensation for all
23 wages earned, including without limitation, the unpaid minimum, overtime, double
24 time, and premium wages for rest and meal periods not provided, but to date have
25 not received such compensation.

26 82. More than 30 days have passed since Plaintiff and Terminated
27 Subclass members terminated from their employment with Defendants.
28 Defendants have not paid Plaintiff and each Subclass member whose employment

1 has ended all wages owed. As a consequence of Defendants' willful conduct in not
2 paying Plaintiff and each Subclass member all earned wages at the time their
3 employment with Defendants ended, Plaintiff and each Terminated Subclass
4 member is entitled to 30 days' wages as a penalty under *Labor Code* § 203.

5 **NINTH CAUSE OF ACTION**

6 **RESTITUTION**

7 (Unlawful Competition in Violation of Business and Professions Code §§ 17200 et
8 seq.)

9 *Plaintiff Individually and on Behalf of the Class Against Defendants*

10 83. Plaintiff incorporates all preceding paragraphs as though fully set
11 forth herein.

12 84. Section 17200 of the California *Business and Professions Code*
13 prohibits any unlawful, unfair or fraudulent business act or practice.

14 85. Plaintiff brings this cause of action in a representative capacity on
15 behalf of the general public and the persons affected by the unlawful and unfair
16 conduct described herein. Plaintiffs and members of the proposed class have
17 suffered and continue to suffer injury in fact and deprivation of wages and monies
18 as a result of Defendants' actions.

19 86. The actions of Defendants, as herein alleged, amount to conduct
20 which is unlawful and a violation of law. As such, said conduct constitutes unfair
21 business practices, in violation of *Business and Professions Code* §§ 17200 et. seq.

22 87. Defendants' conduct as herein alleged has damaged Plaintiff and the
23 members of the Plaintiff Class by denying them wages due and payable, and by
24 failing to provide proper wage statements. Defendants' actions are thus
25 substantially injurious to Plaintiff and the members of the Plaintiff Class, causing
26 them injury in fact and loss of money.

27 88. As a result of such conduct, Defendants have unlawfully and unfairly
28 obtained monies owed to Plaintiff and the members of the Plaintiff Class.

1 89. All members of the Plaintiff Class can be identified by reference to
2 payroll and related records in the possession of the Defendants. The amount of
3 wages due to Plaintiff and members of the Plaintiff Class can be readily
4 determined from Defendants' records. The members of the proposed class are
5 entitled to restitution of monies due and obtained by Defendants during the Class
6 Period as a result of Defendants' unlawful and unfair conduct.

7 90. During the Class Period, Defendants committed, and continue to
8 commit acts of unfair competition as defined by Sections 17200 et. seq. of the
9 *Business and Professions Code*, by and among other things, engaging in the acts
10 and practices described above.

11 91. Defendants' course of conduct, acts, and practices in violation of the
12 California laws, as mentioned in each paragraph above, constitute distinct, separate
13 and independent violations of Sections 17200 et seq. of the *Business and*
14 *Professions Code*.

15 92. The harm to Plaintiff and the members of the Plaintiff Class of being
16 wrongfully denied lawfully earned but unpaid wages outweighs the utility, if any,
17 of Defendants' policies and practices and, therefore, Defendants' actions described
18 herein constitute an unfair business practice or act within the meaning of *Business*
19 *and Professions Code* §§ 17200, et seq.

20 93. Defendants' conduct described herein threatens an incipient violation
21 of California's wage and hour laws, and/or violates the policy or spirit of such
22 laws, or otherwise significantly threatens or harms competition.

23 94. Defendants' course of conduct described herein further violates
24 *Business and Professions Code* §§ 17200, et seq., in that it is fraudulent, improper,
25 and/or unfair.

26 95. The unlawful, unfair, and fraudulent business practices and acts of
27 Defendants as described herein above have injured Plaintiff and members of the
28 Plaintiff Class in that they were wrongfully denied the timely and full payment of

wages owed to them.

96. Defendants have been unjustly enriched as a direct result of their unlawful business practices alleged in this complaint and will continue to benefit from those practices and have an unfair competitive advantage if allowed to retain the unpaid wages.

ATTORNEY'S FEES AND COSTS

97. Plaintiff is entitled to fees and costs, pursuant to California law, including, without limitation, *Code of Civil Procedure* § 1021.5 and *Labor Code* §§ 226 and 1194. Further, enforcement of statutory provisions enacted to protect workers and to ensure prompt payment of wages due employees is a fundamental public interest in California. Consequently, Plaintiff's success in this action will result in the enforcement of important rights affecting the public interest and will confer a significant benefit upon the public.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of herself, and on behalf of the members of the Plaintiff Class, pray for judgment against defendants as follows:

- A. For an order certifying the proposed class;
- B. For the attorneys appearing on the above caption to be named class counsel and for the named Plaintiff to be appointed class representative;
- C. For compensatory damages in an amount according to proof with interest thereon;
- D. For economic and/or special damages in an amount according to proof with interest thereon;
- E. For payment of unpaid wages in accordance with California labor law;
- F. For payment of penalties in accordance with California law;
- G. For penalties pursuant to Labor Code §§ 206, 210, 226, 226(e), 226.3, 226.7, 512, 558, and 1194;

- 1 G. For Defendants to be found to have engaged in unfair competition in
2 violation of California *Business and Professions Code* §§ 17200, *et*
3 *seq.*;
- 4 H. For Defendants to be ordered and enjoined to make restitution to
5 Plaintiff and the class and disgorgement of profits from their unlawful
6 business practices and accounting, pursuant to California *Business*
7 *and Professions Code* §§ 17203 and 17204;
- 8 I. For interest accrued to date;
- 9 I. For statutory damages;
- 10 J. For actual damages;
- 11 K. For punitive damages;
- 12 I. For interests, attorneys' fees and cost of suit under *Labor Code* §§ 226
13 and 1194 and *Code of Civil Procedure* §1021.5; and,
- 14 J. For all such other and further relief that the court may deem just and
15 proper.

16 **JURY DEMAND**

17 Plaintiff, on behalf of himself and all other similarly situated, hereby
18 demands a trial by jury in this case.

19
20 Dated: April 9, 2018

By: /s/Todd M. Friedman

Law Offices of Todd M. Friedman, P.C.
Todd M. Friedman, Esq.
Adrian R. Bacon, Esq.
Attorneys for Plaintiffs